

MEMORANDUM OF LAW

DATE: April 29, 1987

TO: Sergeant S. A. Elmore, San Diego Police
Department

FROM: City Attorney

SUBJECT: Palomar Card Club

By memorandum dated March 19, 1987, you asked whether the proposed move of a cardroom known as the Palomar Card Club constitutes the "establishment of a new cardroom" by relocation within the meaning of San Diego Municipal Code section 33.3903(b)(iv). This issue is significant because cardroom licenses shall be limited to renewal of the licenses of existing cardrooms. There shall be no establishment of new cardrooms. San Diego Municipal Code section 33.3904.

A "cardroom" has been precisely defined and means "any space, room or enclosure furnished or equipped with a table used or intended to be used as a card table for the playing of cards and similar games, and the use of which is available to the public or any portion of the public." San Diego Municipal Code section 33.3903(a).

The San Diego City Council considered the deleterious effects that cardrooms have on the safety, welfare and morals of the City and expressed its intent to enact regulations and provisions governing the establishment, operation, management and continued existence of cardrooms within the City. San Diego Municipal Code section 33.3901. Case law supports the phase out scheme of the cardroom ordinance. A recent appellate court decision upholding the San Diego cardroom ordinance held as follows:

¶ Maintaining a low maximum hourly charge to players in card rooms is reasonably related to a legitimate governmental purpose of discouraging gambling centers. The phase out scheme of the cardroom ordinance reveals such discouragement is a purpose of the ordinance and there is no question this is a legitimate governmental purpose.

Penn v. City of San Diego, 188 Cal.App.3d 636, 641 (1987).

It is unlawful to maintain any cardroom without compliance "with each and every regulation pertaining to such cardroom." San Diego Municipal Code section 33.3902.

The "establishment of a new cardroom" means and includes "the relocation of any currently and validly licensed cardroom." San Diego Municipal Code section 33.3904(b)(iv). Relocate means to establish or lay out in a new place. Webster's New Collegiate Dictionary 995 (9th ed. 1983).

The facts and circumstances submitted for interpretation relate to real property owned by Jack N. Oliver, Sr., which is located at 2724-2726 El Cajon Boulevard, San Diego, California. The real property at 2724 El Cajon Boulevard, the west side unit, is leased to the Palomar Card Club operated by Donald Staats and Robert Cloper. The adjoining premises at 2726 El Cajon Boulevard, the east side unit, are leased to Glen Martin for Mr. Martin's operation of a business known as the Palomar Club, a cocktail lounge. Adjacent to the cocktail lounge is a parking lot for both tenants.

Mr. George John Ronis, attorney for Mr. Oliver, requested an address change from The City of San Diego, Building Inspection Department, Address Coordinator (Attachment 1). The address change was granted by letter dated March 5, 1987 (Attachment 2). The cardroom has been readdressed 2720; the cocktail lounge, 2722, and a third unit to be constructed is to be addressed 2724. The City Treasurer's office has readdressed the existing business licenses to reflect these changes. When construction is completed on the third unit, the cardroom owners desire to move their cardroom to the new unit.

The proposed move of the cardroom into the new unit under construction would constitute a relocation of an existing cardroom within the meaning of San Diego Municipal Code section 33.3903(b)(iv). The express legislative intent to phase out cardrooms is clear. The precise definitions of "cardroom" and "establishment of a new cardroom" in the cardroom ordinance manifest such legislative intent. The proposed movement of the Palomar Card Club from its present location to the unit under construction would place it in a new "space, room or enclosure" or new cardroom and constitute the relocation of an existing cardroom within the meaning of the ordinance. The relocation of a cardroom constitutes the "establishment of a new cardroom" which is expressly prohibited by San Diego Municipal Code section 33.3904.

The address changes have no legal significance under the cardroom ordinance in terms of avoiding a cardroom relocation. Movement of the Palomar Card Club to the unit under construction, a new "space, room or enclosure," would be a relocation and "establishment of a new cardroom" despite retention of the same

address.

JOHN W. WITT, City Attorney

By

Joseph M. Battaglino

Deputy City Attorney

JMB:ls:503.2.1 (x043.2)

Attachments (2)

ML-87-45